

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES L. FISHER, MYRTLE)
HUMPHREY, and MICHELLE)
GABARA,)

Plaintiffs,)

8:07CV378

v.)

TOVEY GOYNES, JAMES W.)
MCKENZIE, DANIEL J. MARRS,)
and ROBERT P. HOUSTON, in)
their official and individual)
capacities,)

Defendants.)

MEMORANDUM AND ORDER

Currently pending in this case are the defendants' "Motion to Abstain or in the Alternative Motions to Stay Proceedings and for a Protective Order," (filing no. [47](#)), and the plaintiffs' motion to substitute Ryan Mahr for Daniel Marrs as a defendant in this action, (filing no. [56](#)).

The plaintiffs filed this action pro se. Effective October 8, 2008, the plaintiffs were represented by attorney Sue Ellen Wall, who entered her appearance as counsel for the plaintiffs on that date.

The defendants' motion to abstain or stay these proceedings was filed before the plaintiffs were represented by counsel, and states that a parallel state court proceeding is currently being litigated in the District Court of Sarpy County, Nebraska. The motion to substitute a party defendant filed by plaintiffs' counsel states the plaintiffs' pro se complaint misidentified the Superintendent of the Omaha Community Corrections Center in 2006 as Daniel Marrs, rather than by his correct name, Ryan Mahr. Plaintiffs' counsel has requested issuance of summons to serve

each of the defendants with a copy of plaintiffs' amended complaint indicating Ryan Mahr has been substituted for Daniel Marrs as a named defendant.

Under the circumstances presented in this case, the court finds that the plaintiffs' motion to substitute Ryan Mahr for Daniel Marrs as a defendant, (filing no. [56](#)), should be granted. Ryan Mahr has not been served as a defendant, and it is unknown for certain whether present defense counsel will represent him. Plaintiffs' counsel likely needs additional time to review the merits of defendants' motion to abstain or stay, and determine how to respond. Depending on how plaintiffs' counsel decides to respond, the defendants' motion to abstain or stay may be moot. I shall hold defendants' motion to abstain or stay for 30 days so these matters can first be determined.

IT THEREFORE HEREBY IS ORDERED:

1. The plaintiffs' motion to substitute Ryan Mahr for Daniel Marrs as a defendant, (filing no. [56](#)), is granted, and the plaintiffs are given until November 7, 2008 to serve this newly named defendant.
2. The clerk shall correct the court's docket to reflect that Ryan Mahr has been substituted for Daniel Marrs as a named defendant.
3. The plaintiffs are given to November 20, 2008 to respond to the defendants' motion to abstain or in the alternative motions to stay proceedings and for a protective order, (filing no. [47](#)).

DATED this 20th day of October, 2008.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge